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No. 82-154

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

WANDA TRANDSTETTER,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For Writ Of Certiorari To The Appellate Court Of Illinois, Fourth Judicial District

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Whether the Illinois bribery statute defines the offense with sufficient specificity to have allowed the petitioner to have determined that offering a campaign gift of one thousand dollars ($1,000.00) to a legislator, where the offer of cash is conditioned, wholly, on a favorable vote on a single House Resolution, is a violation of Illinois law.

Whether the Illinois bribery statute is so overbroad that it has a chilling effect on the rights of Illinois citizens to petition their legislature.

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RESPONDENT'S BRIEF IN OPPOSITION

The respondent asks this Court to deny the Petition for Writ of Certiorari to review the judgment of the Appellate Court of Illinois insofar as petitioner fails to raise a significant question of constitutional proportion that is worthy of review.

OPINION BELOW

The opinion of the Appellate Court of Illinois is appended to the Petition for Writ of Certiorari.

JURISDICTION

The petitioner appears to have satisfied the prerequisites to jurisdiction established in 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The provisions involved are set out in full on pages 2 and 3 of the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

Because the respondent takes exception to the argumentative and, at times, misleading recitation of the facts found in petitioner's brief, this Court is referred to the Illinois Appellate Court opinion in this case for a more neutral factual narration. *See People v. Brandstetter*, No. 16801 (4th Dist. 1982), which is reprinted as Appendix A in the Petition for Writ of Certiorari.

REASONS FOR DENYING THE WRIT

INTRODUCTION

The petitioner has been convicted of bribery. Although the conviction drew some national media attention because it involved the Equal Rights Amendment vote in Illinois, this case simply does not rise to the level of political significance with which the petitioner has attempted to color it. This case involves a simple case of bribery and is concerned only with the interpretation of the Illinois bribery statute.

The petitioner contends that the Illinois bribery statute, Ill. Rev. Stat. 1981, ch. 38, §33-1, is unconstitutionally vague and overbroad.

The respondent suggests that, even under the strictest construction, the statute is not so vague as to prevent petitioner from understanding that her conduct was proscribed, nor so overbroad as to cause a chilling effect on the legitimate exercise of rights secured through the First Amendment to the United States Constitution.

I.

THE ILLINOIS BRIBERY STATUTE DEFINES THE OFFENSE WITH SUFFICIENT SPECIFICITY TO HAVE ALLOWED THE PETITIONER TO HAVE DETERMINED THAT OFFERING A CAMPAIGN GIFT OF ONE THOUSAND DOLLARS ($1,000.00) TO A LEGISLATOR, WHERE THE OFFER OF THE CASH IS CONDITIONED SOLELY UPON A FAVORABLE VOTE ON A SINGLE HOUSE RESOLUTION, IS A VIOLATION OF ILLINOIS LAW.

The petitioner, quite properly, points out that it is a fundamental principle of constitutional law that a criminal statute must be so clearly expressed that a person of ordinary intelligence and experience can

reasonably determine whether a given course of conduct may be lawfully pursued. *See, Connally v. General Construction Co.*, 265 U.S. 385, 393 (1926). A vagueness analysis, however, is limited in scope to the effect of the statute on the specific conduct of the accused. The analysis is not concerned with marginal or hypothetical cases. *Parker v. Levy*, 417 U.S. 733 (1974).

In this case, the petitioner's course of conduct was to slip a note to a legislator offering him a one thousand dollar ($1,000.00) campaign gift wholly conditioned on a "pro-ERA vote." (C. 444) The note was nothing less than an offer of cash for a favorable vote on a specific piece of legislation.

This course of conduct is absolutely, and very clearly, proscribed by Illinois law which provides that:

> A person commits bribery when:
>
> (a) With intent to influence the performance of any act to the employment or function of any public officer, public employee, juror or witness, he promises or tenders to that person any property or personal advantage which he is not authorized by law to accept."

Ill. Rev. Stat., 1981, ch. 38, §33-1(a).

Furthermore, Illinois law also provides that:

> No member of the General Assembly shall accept or receive, directly or indirectly, any money or other valuable thing, from any corporation, company or person, for any vote or influence he may give or withhold any bill, resolution or appropriation, or for any other official act.

Ill. Rev. Stat., 1981, ch. 38, §90-1.

The Appellate Court of Illinois, Fourth District, quite properly determined that these statutes provided adequate notice to allow the petitioner to reasonably understand that her conduct was prohibited.

The State of Illinois has an important and substantial interest in proscribing bribery of state legislators. The respondent respectfully suggests that the offer to give a legislator a substantial amount of cash in exchange for a certain vote on a specific piece of legislation is "bribery" in every sense of the term. The fact that the petitioner seeks to attach a noble political goal to her action does not justify the crime under the statute. Nor should it. There is no place in criminal law for an "end justifying the means" analysis.

The petitioner's claim of vagueness is clearly frivolous and is, therefore, not worthy of the expense of the valuable time and resources of this Court required to review the reasoned finding of the Appellate Court of Illinois on this question.

II.

THE ILLINOIS BRIBERY STATUTE IS NOT SO BROAD THAT IT HAS A CHILLING EFFECT ON THE RIGHTS OF ILLINOIS CITIZENS TO PETITION THEIR LEGISLATURE.

The petitioner next contends that the Illinois bribery statute is so overbroad, on its face, that it tends to stifle individual liberties protected by the First Amendment. In support of this position, the petitioner embarks on an exercise of the imagination, speculating loosely about potential First Amendment activities which may fall among the items prohibited by the statute. This speculation focuses on the phrases "property and personal advantage" and "authorized by law." (Petition at pp. 13-15) The petitioner's focus is made despite the narrow interpretation given these phrases by the Appellate Court of Illinois. *People v. Brandstetter*, 103 Ill. App. 3d 259, 264-65, 430 N.E.2d 731, 735-36 (4th Dist. 1982).

In general, a person who can be punished in a constitutional manner under a statute cannot challenge the law due to its possible unconstitutional application to others. It is true, however, that an exception to this rule has been carved out by this Court where the potential unconstitutional application to others involves rights which are protected by the First Amendment. *See, Gooding v. Wilson*, 405 U.S. 518 (1972). However, "The existence of a chilling effect, even on First Amendment grounds has never been considered a sufficient basis in and of itself for prohibiting state action." *Younger v. Harris*, 401 U.S. 37, 51 (1971).

> Just as the incidental chilling effect of such statutes does not automatically render them unconstitutional, so the chilling effect that admittedly can result from the very existence of certain laws on the statute books does not in itself justify prohibiting the State from carrying out the important and necessary task of enforcing these laws against socially harmful conduct that the State believes in good faith to be punishable under its laws and the Constitution.

Younger v. Harris, 401 U.S. at 51.

Moreover, the justification for a facial overbreadth approach decreases as the behavior in question moves from pure speech toward physical acts, especially where that conduct falls within the scope of an otherwise valid criminal law reflecting legitimate state interests in maintaining control over harmful, constitutionally unprotected actions. *Broadrick v. Oklahoma*, 413 U.S. 601 (1973).

In commenting upon the nature of an overbreadth claim in the First Amendment area, this Court noted:

> Although such laws, if too broadly worded, may deter protected speech to some unknown extent,

> there comes a point where the effect—at best a prediction—cannot, with confidence, justify invalidating a statute on its face and so prohibiting a State from enforcing the statute against conduct that is admittedly within its power to proscribe. [citation omitted] To put the matter another way, particularly where conduct and not merely speech is involved, we believe that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep.

Broadrick v. Oklahoma, 413 U.S. at 615.

In *Broadrick*, this Court upheld a state law prohibiting the solicitation or reception of political contributions by state civil servants. Since the law was not directed at particular political viewpoints, it was subject to a less exacting overbreadth scrutiny. Even though the statute could be susceptible to some improper applications, it would not be "discarded *in toto* because some persons' arguably protected conduct may or may not be caught or chilled by the statute." 413 U.S. at 618.

The petitioner does not suggest that the state should not be permitted to prohibit the bribing of state legislators. Clearly such a position would be frivolous. *Cf. United States v. Brewster*, 506 F.2d 62, 77 (D.C. Cir. 1974). Rather, she argues that the statute may, in theory, be construed to punish other, innocent, activity.

The basic difficulty with defendant's position is that it ignores the statutory elements of the bribery offense. The statute does not prohibit offering help to a legislator in a re-election campaign, nor outlaw fund-raising or politically motivated contributions. Neither does the law restrict in wholesale fashion legitimate attempts to influence a state representative. Rather, when read in conjunction with the legislative misconduct section (Ill. Rev. Stat., ch. 38, sec. 90-1 (1979)), bribery merely punishes the offer of

property or personal advantage to a legislator in exchange for a vote on legislation when the offeror intends to influence the legislator's decision on how to vote. This proscription simply restricts the offer of a *quid pro quo* for a vote as a means of protecting the legislative process. Absent such a law, votes in the General Assembly could be sold to the highest bidder. As was stated in *Broadrick*, since the law seeks to regulate such conduct in a neutral manner without showing partiality to any political viewpoint, the overbreadth analysis is less exacting than in other contexts. And since the statute seeks to punish a range of conduct which the State has a strong interest to prevent, total invalidation of section 33-1 would be unwarranted based upon a fear of a *de minimis* chilling effect on marginal First Amendment rights. The People of the State of Illinois firmly contend that it is *their* right to protect themselves from "wholesale bidding" for votes in the Illinois General Assembly.

Moreover, the People of the State of Illinois respectfully suggest that, while citizens may have a First Amendment right to support legislative positions and, arguably, even to seek to influence the stand of public officials on those issues through general support or opposition, there is no right, constitutional or otherwise, to bargain monetary support as a *quid pro quo* for a specific vote on a specific piece of legislation. It is a very different thing to send a check for $1,000.00 to the campaign committee of a legislator who espouses a position that one favors than it is to confront a legislator in the capitol rotunda shortly before the vote on a bill for which one has an interest and offer the legislator a $1,000.00 campaign gift if, *and only if*, he votes a particular way. The former is healthy political involvement. The latter is a bribe—a bribe which threatens the integrity of the legislative process—a bribe which the People of the State of Illinois will not countenance.

The First Amendment is not threatened by the Illinois bribery statute. Nor, is legitimate political involvement of any kind.

This Court should reject the cry of "overbreadth" by this petitioner and reject her attempt to bring the bribery of state legislators within the definition of the protected exercise of First Amendment rights.

Neither the intent nor the spirit of the First Amendment would be well-served by granting this petition.

CONCLUSION

For these reasons, the People of the State of Illinois ask this Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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